



Ninety-Ninth Legislature - First Session - 2005
Committee Statement
LB 117

Hearing Date: February 4, 2005

Committee On: Judiciary

Introducer(s): (Bourne, Aguilar, Price, Stuthman, at the request of the Governor)

Title: Change penalties for certain drug offenses and provisions relating to ephedrine, pseudoephedrine, and phenylpropanolamine

Roll Call Vote – Final Committee Action:

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

7	Yes	Senators Aguilar, Bourne, Combs, Flood, Foley, Friend, Pedersen
1	No	Senator Chambers
	Present, not voting	
	Absent	

Proponents:

Senator Pat Bourne
Tom Nesbitt
Shane Flynn
Corey O'Brien

Marvin VanHaaften
Gregg Wright
Glenn Kemp
Tim Keigher

Opponents:

Libby Dannenberg
Russ Rathjen
David Winkler
Kathy Siefken
Jeff Hines
Jim Otto
Carey Potter

Representing:

Introducer
Nebraska State Patrol
Nebraska State Patrol
Nebraska Attorney General's Office
County Attorney's Association
Iowa Governor's Office of Drug Control Policy
Self
State Clandestine Lab Team
Nebraska Petroleum Marketers & Convenience
Store Association

Representing:

Consumer Healthcare Products Association
Nebraska Pharmacists Association
Affiliated Foods Midwest
Nebraska Grocery Industry Association
Walgreens
Nebraska Retail Federation
National Association of Chain Drugstores

Neutral:
Kelly Boryca
Jalyn Todd

Representing:
Pfizer
self

Summary of purpose and/or changes:

LB 117 proposes several changes to the controlled substances act to increase the penalties for the manufacture, distribution, or possession with intent to distribute of methamphetamine and other controlled substances and restricts the sale of products containing solid forms of pseudoephedrine.

Methamphetamine Penalties

The changes made by LB 117 relating to penalties under the controlled substances act are summarized below:

1. Changes the penalty structure for the manufacture, distribution, or possession with intent to distribute both methamphetamine and heroin by lowering the amount of drug needed to qualify for a certain penalty level. The new levels are equivalent to the current penalties for Cocaine. The table below compares existing law with the weights proposed in LB 117 and the penalty imposed under both:

	Current Law	LB 117	Penalty
Meth	>16oz (448grams*)	>140g	Class IB Felony: 20 to Life
	7-16oz (196-447g)	28-139g	Class IC Felony: 5-50 Years
	3.5-7oz (98-195g)	10-27g	Class ID Felony: 3-50 years
Heroin	>500 g	>140g	Class IB Felony
	100-499g	28-139g	Class IC Felony
	28-99g	10-27g	Class ID Felony

*28 grams = 1 ounce

2. The definition of exceptionally hazardous drug in the controlled substances act is amended to include methamphetamine. This has the effect of increasing the penalty for the manufacture, distribution or possession with intent to distribute less than 10 grams of methamphetamine from a class III to a class II felony.
3. The penalty for the manufacture, distribution or possession with intent to distribute a controlled substance is enhanced if the defendant knowingly possessed a firearm while committing the offense. This enhancement is an increase of one felony level up to a maximum penalty of a class IB felony. Currently, the possession of a firearm while violating the controlled substances act is treated as a separate offense punishable as a class IV felony.
4. The penalty for selling a product containing ephedrine, pseudoephedrine or phenylpropanolamine to a person whom the seller knows will use the product to produce methamphetamine or for selling such a product in reckless disregard as to how it will be used is increased from a class III misdemeanor to a class IV felony.

Pseudoephedrine Sales

LB 117 also restricts the sale of products containing pseudoephedrine or phenylpropanolamine as follows:

1. Products containing solid forms of pseudoephedrine or phenylpropanolamine can only be sold by pharmacies and must be stored behind the counter or in a locked case. Gel capsules and liquid forms of such drugs may still be sold over the counter.
2. No individual may purchase products containing more than 9 grams of pseudoephedrine or phenylpropanolamine base during any 30 day period.
3. Individuals purchasing such products will be required to show a photo ID and sign a log book. The log book shall contain the name of the purchaser, date, and amount of product purchased and shall be open to inspection by law enforcement agencies for drug enforcement purposes.

Explanation of amendments, if any:

The committee amendment strikes and replaces sections 4 and 5 of the bill, which contain all of the restrictions on the sale of pseudoephedrine products, including the log book and pharmacy only sales provisions . All of the penalty provisions relating to the manufacturing and distribution of controlled substances and possession of a firearm while manufacturing or distributing a controlled substance remain unchanged.

The committee amendment places the following restrictions on the sale of pseudoephedrine:

- Pseudoephedrine products may be sold by any retailer but must be stored behind the counter or in a locked container, inaccessible without assistance. All pseudoephedrine products are covered by this requirement; there is no distinction between solid and liquid or single and multi-ingredient products.
- Pseudoephedrine may not be sold in packages containing more than 1,440 milligrams of pseudoephedrine base;
- Pseudoephedrine may only be sold by individuals over the age of 19;
- Pseudoephedrine may only be purchased by individuals 18 years of age or older, and identification must be presented at the time of purchase.
- No person may purchase products containing more than 1,440 milligrams of pseudoephedrine base within any 24 hour period. A violation of this requirement is punishable as an infraction.
- No retailer shall sell products containing more than 1,440 milligrams of pseudoephedrine base to any one person within any 24 hour period. A violation of this requirement is punishable with a civil fine.

Senator Patrick J. Bourne, Chairperson